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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

GTE's OPPOSITION TO PETITIONS FOR RECONSIDERATION

TABLE OF CONTENTS

SUMMARY

GTE believes the Commission has done a thorough job crafting a scheme of rate regulation for the cable industry in compliance with its mandate from Congress. Petitions for Reconsideration were received from a number of affected cable operators concerned about the effect of the removal of excess profits generated by market power unfettered by regulation. GTE submits these comments opposing the Petitions for Reconsideration insofar as they attempt to eviscerate the rate-making scheme established.

The cable operators and their supporters have again raised arguments in an attempt to remain unregulated. Their arguments that differing rate-making treatments must be accorded basic as opposed to non-basic rates is wrong. Congress simply drafted the requisite formula for constitutional cost of service to be explicit in its instruction to the Commission that basic service was not to subsidize any of the other cable services. The Commission's plan must, however, be fine tuned to permit the cable operator an initial revenue neutral rate increase up to the benchmark in order to permit the cable operator an adequate opportunity to earn a reasonable return. Other arguments that the benchmark-price cap plan is too severe are premature and must ultimately fail as yet another attempt to avoid regulation. In particular, the Commission should not use data in the sample of competitive firms as the basis for establishing benchmarks.

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GTE'S OPPOSITION TO PETITIONS FOR RECONSIDERATION

GTE Service Corporation on behalf of the GTE Telephone Operating Companies ("GTOCs") (collectively "GTE") makes these reply comments in opposition to Petitions for Reconsideration filed by various parties in response to the *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order,* MM Docket No. 92-266, 1993 FCC LEXIS 2417 (Released May 3, 1993) ("*Report and Order*").[1]

1 Petitions for Reconsideration to which this Reply is directed were filed by: National Cable Television Association ("NCTA"); Booth American Company, et al. ("Joint Parties"); Corning Incorporated and Scientific-Atlanta, Inc. ("Corning"); Cablevision Systems Corporation; Affiliated Regional Communications Ltd. ("ARC"); Comcast Cable Communications, Inc.; Liberty Media Corporation; Tele-Communications, Inc. ("TCI"); Viacom International, Inc.; Century Communications Corp.; Harron Communications Corp. ("Harron"); Baroff, Koerner, Olender & Hochberg ("BKOH"); Blade Communications, Inc.; Colony Communications, Inc., et al. ("Colony"); and Newhouse Broadcasting Corporation. All references to such petitions are made hereafter to the petitioner's name in short form.

I. Introduction.

The Commission has obviously done a thorough job of crafting a scheme of rate regulation for the cable industry in compliance with its mandate from Congress.[2] Petitions for Reconsideration were received from a number of affected cable operators, all concerned about the very effect Congress asked the Commission to achieve, removal of excess profits generated by market power unfettered by regulation. GTE submits these comments opposing the Petitions for Reconsideration insofar as they attempt to eviscerate the rate-making scheme established. GTE does suggest that some tuning of the framework is in order.

II. The Rate-Making Requirements for Both Basic and Cable Programming Services Are the Same.

The National Cable Television Association ("NCTA") proposes at 3 that "Congress intended that the Commission apply different substantive . . . standards to basic and non-basic rates . . ." suggesting that to interpret the statute otherwise "strains credulity."[3] NCTA is simply wrong.

The 1992 Cable Act did establish two separate sections for regulation of basic rates, §623(b), and cable programming service rates, §623(c). Other than that separation, the substantive requirements of both sections are remarkably alike. Referring to basic rates, §623(b)(2)(C)(i) requires the Commission to take into account "the rates for cable systems, if any, that are subject to effective competition. . . ." The language of §623(c)(2)(B) referring to non-basic rates is identical. In §623(b)(2)(C)(ii) Congress directed the Commission to deal with the direct costs of providing basic rates and in (iii) turned its attention to the portion of joint and common costs for providing

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2 Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act").

3 *See also* Joint Parties at 3; Liberty Media at 5; Continental at 1.

basic rates. Subsection (v) deals with the allocable portion of fees and taxes assessed by state or local authorities, and (vi) deals with the requirements to support public, educational, or governmental channels. Subsection (vii) provides for the Commission to permit a reasonable profit. All costs properly supported by basic rates are thus addressed.

For non-basic rates, §623(c)(E) does not break out the costs as explicitly as its counterpart sections of 623(b) described above, but is as inclusive. The Commission is directed to consider the "capital and operating costs of the cable system . . . " in arriving at rates. Operating costs are obviously the same as those enumerated in §623(b)(ii),(iii), and (v), except that they are the costs for non-basic service. Capital costs include a reasonable profit (return) on investment.

In traditional rate-making terms Congress has, for both basic and non-basic service described a cost of service equation. Once a regulatory agency or the with that earned by comparable businesses[5] and that the company's shareholders are entitled to a return commensurate with the risk and uncertainty of the enterprise.[6] The cost of service descriptions which the Commission is charged to consider meet the constitutional requirement that regulated entities not be "limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."[7]

TCI (at 26) and Time Warner (at 12, 13) argue that such putative restrictive regulation will affect the variety, amount and quality of program choices made available to customers. The availability and quality of cable programming services may be radically altered as a response to "overly aggressive rate regulation of such services. . . ."[8] To make its point TCI takes the extreme argument that if one franchising authority were allowed to set such rates it might be sorely tempted to peg them artificially low, on the basis the operator could make the difference up from another less vigilant franchising authority. (TCI at 29.) One can always make this argument, but the reality of the situation is that the courts have been vigilant in reversing such attempts.[9] The other arguments simply ignore the fact that the cable operator will have an opportunity to demonstrate the proper cost of service if it cannot live within the benchmark.

In summary, the Commission has properly construed the rate-making scheme established by Congress in the 1992 Cable Act. The 1992 Cable Act provides flexibility to the Commission to establish benchmark rates, with the safe harbor of cost of service

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5 *Bluefield Water Works & Imp. Co. v. West Virginia*, 262 U.S. 679 (1923).

6 *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

7 *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

8 TCI at 28.

9 *See, e.g., North Carolina v. Lee Tel. Co.*, 263 N.C. 702, 190 S.E.2d 319, 58 PUR 3d 36, 41, 42 (1965).

rate making for the cable operator. The Commission may consider competitive cable rates for both basic and non-basic service and give benchmark treatment to both.

III. The Arguments Presented Against the Commission's Competitive Benchmark Scheme are Nothing More Than Efforts to Avoid Implementation of the 1992 Cable Act and Should Be Dismissed.

A number of cable operators argue that the Commission's competitive benchmark system is flawed and should be rejected because the sample of competitive systems is inadequate, some of the competitive systems charge rates that do not include reasonable profit or that the model specification is in error. In attacking the benchmark competitive system on these technical grounds, the parties are basically arguing that their rates should not be reduced closer to the level charged by competitive systems. Rejection of the benchmark system on such grounds is not warranted. First, this would ignore that the Commission is instructed by Congress to consider rates of competitive systems in determining reasonable rates.[10] Secondly, if rates are left at current levels, the Commission would be flouting the findings of Congress that without competition, cable operators have had undue market power and that their prices have increased three times faster than inflation.[11]

A. The sample of competitive firms is statistically reasonable for the Commission's purposes.

NCTA would have the Commission ignore its sample evidence on competitive system rates entirely in setting reasonable rates. NCTA claims that the sample is not

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[10] 1992 Cable Act, §§623(b) & (c). *See* H.R. Conf. Rep. No. 102-862, 102d Cong., 2d Sess., at 62 (1992).

[11] 1992 Cable Act, sec. 2(a)(1), (2).

representative of the universe of systems.[12] The drawing of a sample of competitive systems is necessarily constrained because there are relatively few such firms. The Commission's process attempted to use the universe of these firms. Some did not reply to the questionnaire. This in and of itself does not mean that the sample is not representative. There is no particular evidence that systems with certain characteristics were less likely to reply than others. If that were true, the results could be considered biased. However, without such evidence the Commission is correct in assuming that the nonresponses were randomly distributed and therefore would not impact the summary results.[13] The calculated statistics should be representative of competitive systems.

B. The Commission should not remove competitive overbuild and municipal systems from its sample.

NCTA and other cable industry petitioners also assault the Commission's derivation of benchmark per-channel rates by attacking the inclusion of data from systems thought to face facilities-based effective competition -- private overbuilds or municipal systems.[14] For the most part, these cable industry criticisms assume -- with little or no documentation -- that the private overbuilders are engaged in cutthroat competitive disequilibrium and have priced their services below levels required for long-

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[12] NCTA at 11; Coalition of Small System Operators at 6.

[13] This is a normal and accepted practice in survey research. Further, the Commission's plan protects operators from any unknown bias in the sample since operators always have the option of making a cost of service showing. The Commission adopted proposed cost of service rules at its July 15 Open Meeting. The Commission intends to develop a streamlined showing to ensure this option is not unduly burdensome. *See* FCC News, "FCC Proposes Requirements to Govern Cost-of-Service Showings by Cable Companies (MM Docket No. 93-215)," July 16, 1993.

[14] For a breakdown of data responses by the statutory categories of effective competition, *see generally* Appendix E, at paras. 7-13, to First Report and Order.

term economic viability. Municipal system rates also are assumed to be suppressed owing to supposed deliberate public subsidy, avoidance of taxes, and other causes.[15]

Offering their own statistical analyses of responses to the FCC survey described at Appendix E, certain petitioners fault the Commission for applying an average competitive price differential (which they concede to be about 10%) to all cable systems, regardless of variations in size, regional location, predictably higher costs, and several other factors.[16] Viacom's Dertouzos-Wildman study, for example, claims that the Commission's adopted benchmark models ignore such known cost influences on prices as wage rates, taxes and population density, while confusing pure competitive effects with factors that merely correlate to the presence of an overbuild.

Viacom's Dertouzos-Wildman study finds that by comparison with the FCC's random sample, overbuild systems have more subscribers per franchise and per system, more above-20,000 subscriber systems, more total and satellite channels on basic service, more pay channels, less churn, more miles of plant and newer head-ends. Overbuild systems are less dependent on basic service revenues and are only half as likely to be owned by an MSO, but have a 75% greater chance of facing

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[15] *See*, *e.g.*, NCTA at 11-14; Liberty Media at 10-12. *See also,* Shew (Arthur Andersen) analysis attached to Harron at 11-13.

[16] Harron (Shew) at 10; Viacom (Dertouzos/Wildman) at 8-13; TCI (Besen/Woodbury) at 16, 21-26. NCTA (Economists Incorporated) at 15. The first two of these analyses were submitted in both the Further Notice of Proposed Rulemaking and in those parties' reconsideration petitions in MM Docket 92-266, while the TCI analysis was attached to comments in the Further Notice dated June 17, 1993. Although the latter study is not technically a part of the reconsideration record, it addresses the overall reliability of the FCC's benchmark methodology. If one were to accept the NCTA position (discussed *supra,* Section III.A.) that the sample is invalid, then one also must reject NCTA's analysis of the significance of the rate differential, since the tests require assumptions of valid sample and universe statistics. In other words, the hypothesis of mean difference can neither be rejected or accepted.

competition from six or more off-air TV signals. The authors identify a technology-driven difference in pricing, then add:

> [o]verbuild [s]ystems have more premium channels . . . have more [redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]

tending to keep basic service rates down, such results deserve applause rather than criticism.[19]

For the statistician to present these remarkable differences and then dismiss them as a faulty comparison is to focus on the trees and miss the forest. Instead of ignoring the relatively small percentage of examples of head-to-head competition as atypical, the Commission should be adopting policies that will make such systems more typical. In its continuing effort to refine and simplify rate-setting methodologies,[20] the FCC should look for ways to encourage the consumer-friendly developments so clearly identified in the Dertouzos/Wildman comparisons.

NCTA also claims that municipally owned systems and those systems that compete head-to-head with municipally owned systems should be excluded from the analysis. It asserts belief that its systems "typically are subsidized by the municipality and are not intended to earn profits."[21] NCTA attempts to demonstrate that this assertion is true by providing an "economic analysis" by Malarkey-Taylor of one

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[19] Many of the factors found by Dertouzos/Wildman to differentiate competitive from random-sample systems suggest that the former have positioned themselves for lower costs. Even assuming ulterior motives on the part of one or more operators engaged in price wars, there is little or no record evidence of pricing below cost -- an essential element of predation under the Sherman Act or of price discrimination under the Robinson-Patman Act. And further, even if below-cost pricing were established, this in itself is not sufficient to establish injury to competition but must be accompanied by evidence of likelihood of recoupment by the predator: "[U]nsuccessful predation is in general a boon to consumers." *Brooke Group Ltd. v. Brown & Williamson Tobacco Corporation*, U.S. Supreme Court, No. 92-466, decided June 21, 1993, 61 LW 4699, 4703.

[20] *See* Notice of Proposed Rulemaking, MM 93-215, July 16, 1993.

[21] NCTA at 12.

municipally owned system.[22] The analysis is flawed and should be ignored. The author uses a hypothetical replacement cost as the basis for calculating unprofitability. The Commission has no way of knowing whether the system is actually unprofitable, since it is not told the original cost of plant in service or the actual operating expenses including actual interest expense.[23] The demonstration by the author can in no way be characterized as proof of the system's profitability. Further, even if it is assumed for the moment that the analysis actually showed unprofitability, it does not prove that all municipal systems are subsidized.[24] It is a single data point and is not statistically representative. While NCTA argues that the Commission's survey sample of competitive systems is inadequate, it would have the Commission eliminate data on an entire group of competitive systems based upon the "evidence" of a sample of one. At least, NCTA should apply the same rigor to its own analysis that it wants the Commission to apply.

In summary, the Commission's use of competitive system data to calculate benchmark rates is reasonable. The Commission should reject arguments that it drop overbuild and municipal systems from the calculation of competitive benchmarks.

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[22] Joint Parties (at 11) also argue that competitive firms do not make reasonable [illegible]

IV. Cable Firms Should Be Allowed to Raise Initial Rates to the Competitive Benchmark in Certain Instances.

The Commission's two-part benchmark structure will require some cable operators to lower rates for one service category yet restrict them from raising rates for the other category when below the relevant benchmark.[25] NCTA and Newhouse Broadcasting Corporation believe that the prohibitions on rate increases to the benchmark should be reconsidered and modified.[26] GTE concurs. Specifically, the Commission should modify its initial application of the benchmarks so the effects are considered jointly. If the rate for non-basic service exceeds the benchmark and the rate for basic service is below its benchmark, the operator should have the option of increasing the below benchmark rate. However, that increase should be limited to no more than the amount necessary to offset the revenue reduction caused by lowering the non-basic rate. The new price should not exceed the benchmark for basic service. In other words, the operator should be permitted a one-time "revenue neutral" shift, if both resulting prices comport with the benchmarks.

This structure is reasonable because the test for extraordinary profit must be made on a combined basis.[27] As NCTA explains, an operator may be charging a price for non-basic service that is higher than the competitive benchmark in order to offer below-cost basic service. That does not necessarily mean that the operator is or is not making monopoly profit. If both adjusted prices are found to comport with the competitive benchmarks they should be deemed reasonable. However, those operators whose current rates for both basic and non-basic services are below the

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[25] *Report and Order* at paras. 232 and 397.

[26] NCTA at 8; Newhouse at 3.

[27] This does not hold for tests of interproduct cross-subsidization or for tests of predatory pricing. Those require an examination of individual prices in relation to marginal costs.

benchmark should not be allowed to raise those rates to the benchmark. Since these rates were chosen without regulatory oversight and without competition, it is fair to assume that they are set at a combined level that is fully compensatory. Allowing these cable operators to increase to the benchmarks without additional justification would be to allow unreasonable rates.

In summary, cable operators who must lower the rates of one service category to the benchmark should be allowed a one-time revenue neutral price increase in the other category, so long as both adjusted rates meet the benchmark requirements.

V. The Commission's Treatment of External Affiliated Costs Should Not be Expanded to Include Capital Investments and Programming Costs, But Rather Modified to Achieve Greater Symmetry Between Regulation of Cable Operators and Local Exchange Carriers.

NCTA (at 19), Corning (at 5), and Comcast (at 2) seek reconsideration of the types of costs that are classified as external in the Commission's cable operator price only be judged in conjunction with the complete specification of the price cap indices, including the productivity offset. However, GTE believes it is necessary to respond to a few of the points raised by the petitioners with respect to external treatment.

Overall, the Commission has granted external treatment for costs that have been deemed "outside the cable operator's control. . . ." (*Report and Order*, para 249.) This is essentially the same definition as exogenous costs in the LEC price cap plan.[30] Specifically, the Commission's cable price cap rules permit flow through treatment, referred to as "external cost" treatment, for retransmission consent fees and programming costs. It granted the treatment for retransmission consent fees to assure that rates for the basic service tier remain reasonable and to "provide greater assurance that signals of broadcasters electing retransmission consent will be available on the basic service tier." (*Report and Order*, para 246) Programming cost, with the exception of those costs for programming services affiliated with cable operators, were categorized as external because, according to the Commission, these costs have increased at a rate greater than inflation which could jeopardize the programmers ability to develop and produce material in the future.

NCTA, Comcast, Corning, and Viacom petition the Commission to expand its classification of external costs to include the costs of capital investments.[31] Corning states that "[t]he extraordinary nature and magnitude of cable plant expansions or upgrades cannot be accommodated within either the Commission's initial benchmark or the subsequent price cap adjustments for regulated cable rates."[32] NCTA was concerned that the Commission would "not want affirmatively to encourage

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30 *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report & Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6807 (1990) ("*87-313 Second Report and Order*")

31 NCTA at 20; Comcast at 2, 11; Corning at 5; Viacom at 5.

32 Corning at 5.

technological improvements and system upgrades."[33] These petitioners ignore two principles of price cap regulation.

First, exogenous/external costs are only those costs which are beyond the control of the firm and only to the degree not captured in the price index measure. In the case of capital investments, cable operators generally decide when and where they should be undertaken. Since these decisions reside under management control, exogenous treatment is not appropriate.[34] Second, price caps regulation is designed to encourage firms to become more productive and does so by allowing them to retain reasonable profit levels.[35]

For this earnings freedom, the firms must assume some risk. Viacom seems to recognize this risk when it notes that the Comission has encouraged the telephone industry to invest in video dialtone.[36] If the cable operator wishes to expand, rebuild, or upgrade its facilities, it must operate its firm in an efficient manner and invest appropriately. The cable operators may find it difficult, at first, to operate in this environment. They have been existing in an unregulated monopoly market where there has been almost no constraint on price increases, and they have had ready access to highly leveraged debt for capital investments. They have had the best of all worlds. Now under the price cap regulatory scheme, they must begin behaving more like competitive firms, where prices will be restricted to competitive levels and investments

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33 NCTA at 21.

34 Certain investments, however, should be treated exogenously when the investments have been mandated by federal, state or local regulatory or legislative action.

35 [illegible] *Second Report and Order* at [illegible]

should only be made if efficiencies and the market warrant. Corning even recognizes that "cost savings are sure to follow" system improvements.[37] As the Commission well knows, price caps is a form of regulation which attempts to "mirror the efficiency incentives found in competitive markets. . . ."[38] Therefore, the Commission should dismiss the petitioners' request for external cost treatment of capital investment.

The Commission also granted external cost treatment for programming costs, except those costs associated with programming services affiliated with a cable operator. NCTA, TCI, Cablevision, and ARC seek reconsideration of the Commission decision in order to include programming costs of vertically integrated systems and programmers.[39] NCTA believes that the prohibition is "wholly unwarranted" and will "stifle" investment in programming.[40] NCTA questions the Commission's "brief" justification of this limitation, which is to protect cable subscribers from unjustified increases due to the passing through of cost from one affiliate to the other.[41] The

GTE opposes the expansion of the definition of external costs to include the programming costs of a programmer affiliate of a cable operator.

Bell Atlantic (at 5) seeks modification of the external costs rules to permit cable operators to only pass through costs "to the extent telephone companies can do the

VI. The Commission's Equipment Rate Decisions Point In the Direction of a Competitive Marketplace and Should Be Maintained.

Cablevision and other cable industry commenters claim that Congress meant to apply the actual cost standard for an operator's rental rates only to equipment made available to a basic service customer. Cablevision faults both the Commission's reading of the law to require actual-cost pricing of all equipment used to receive basic cable service -- even if it also passes the signals of non-basic services -- and the agency's policy decision to apply the same standard to equipment used only for receipt of cable programming service.[43]

GTE supports the Commission's combining of statutory authority and sound policy to develop as unitary as possible a regimen of cost-based rates for installation and lease of equipment and installation of service. If properly executed, these transitional regulations will lead to the kind of competition that has emerged in the telephone industry in installation, maintenance, repair, and lease/purchase of equipment.[44] Just as initial rules were needed in the telephone industry, so these cable equipment regulations are required for the time being.[45]

On its face, the 1992 Cable Act extends the actual-cost standard beyond basic service to cover addressable converters and other equipment required for receipt of

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[43] Cablevision at 4-12. *See also* Newhouse at 15-18; Colony at 15-20; Baraff, Koerner, Olender & Hochberg (BKOH) at 7-9; and Blade at 3-5.

[44] Access to cable home wire is a part of the picture, and in this regard GTE supports the suggestion by the National Association of Telecommunications Officers and Advisors, et al. (at 39-40) that cable operators report their per-foot replacement costs in aid of the Commission's *Report and Order* in MM Docket 92-260, 8 FCC Rcd 1435 (1993).

[45] Any doubts about the continuing ability of cable operators to suppress competition in equipment installation, leasing and servicing are quickly dispelled by a reading of the comments in the pending proceeding on equipment compatibility, ET Docket 93-7.

per-channel or per-program offerings.[46] This adds to the reasonableness of the Commission's conclusion that the possibly ambiguous verb, "used," was meant to embrace equipment jointly employed for the passing of both basic and cable programming service signals.[47]

Cablevision counters that if Congress had meant to sweep the equipment used to receive cable programming service under actual cost, it would not have included the enabling equipment in the definition of the service found at §643(l)(2). By doing so, says Cablevision, Congress implicitly established an equipment rate standard of "not unreasonable" rather than "actual cost."

This amounts to a quarrel about how Congress organized the statute. In fact, the legislators described basic and cable programming services in separate subsections. (*See* discussion *supra* at 2.) In the first, the cost for equipment passing basic signals is prescribed; in the second, the cost of the equipment used to receive cable programming service is included in the term "operating cost."[48] The Commission has traditionally construed the latter to mean actual booked cost.

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46 1992 Cable Act, §643(b)(3)(A).

47 The FCC reads the legislative history in its favor on interpreting "used" versus the superseded word "necessary," while Cablevision disagrees. However, resolving the semantic dispute does not remove the ambiguity, and if the Commission's interpretation of a less-than-certain term is reasonable, it will be sustained. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S.837 (1984).

48 There is more symmetry here than may first appear. The basic rate standard is reasonableness, as amplified by actual cost for equipment. The cable programming service rate standard is "not unreasonable," similarly qualified by the equipment test of actual cost.

VII. Value-based Pricing of Service to Additional Outlets Is not Permitted by the Statute.

Joint Parties argue (at 15-16) that rates for service on additional outlets should be value-based rather than tied to additional costs of provision. GTE reiterates its belief that:

> Charges for additional outlets should be determined on an actual cost, non-recurring basis. That is, they should be limited to actual costs of any equipment necessary to activate additional outlets and actual installation costs, if any.[49]

To judge by the literal language of the statute, Congress intended to apply the actual-cost standard to "installation and monthly use of connections for additional television receivers." (§643(b)(3)(B).) Joint Parties contend that "connections" means "equipment," but the equation is strained at best.

Congress knew how to say "equipment" when it wanted to, and did so at §643(b)(3)(A). The better reading, as previously urged by GTE, is that (A) refers to all equipment at all outlets, while (B) means to bar recurring charges for additional outlet service. To the extent that there may be ambiguity as to whether "connections" in (B) refers to service or to equipment, the FCC's reasonable construction of the term is entitled to deference.[50]

VIII. Conclusion.

The cable operators and their supporters have again raised arguments in an attempt to remain unregulated. Their arguments that differing rate-making treatments must be accorded basic as opposed to non-basic rates is wrong. Congress simply drafted the requisite formula for constitutional cost of service to be explicit in its instruction to the Commission that basic service was not to subsidize any of the other

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[49] Reply Comments, MM Docket 92-266, February 11, 1993, at 19.

[50] *Chevron,* note 47, *supra.*

cable services. The Commission's plan must, however, be fine tuned to permit the cable operator an initial revenue neutral rate increase up to the benchmark to adequately permit the cable operator an opportunity to earn a reasonable return. Other arguments that the benchmark-price cap plan is too severe are premature and must ultimately fail as yet another attempt to avoid regulation. In particular, the Commission should not use data in the sample of competitive firms as the basis for establishing benchmarks.

Additionally, GTE has shown in other related proceedings that the telephone company model of deregulation of equipment and wiring is appropriate and preferable for cable as well. The arguments raised on reconsideration in this area are inadequate and should be dismissed.

To the limited extent set out, GTE believes the Commission should adjust its *Report and Order*. Otherwise the petitions for reconsideration should be denied.

Respectfully submitted,

GTE Service Corporation on behalf
its affiliated domestic
telephone operating companies

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July 21, 1993

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Opposition to Petitions for Reconsideration" have been mailed by first class United States mail, postage prepaid, on this 21st day of July, 1993 to all parties of record.

Ann D. Berkowitz